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10 UNITED STATES DISTRICT COURT
11 CENTRAL DISTRICT OF CALIFORNIA
12 SOUTHERN DIVISION (SANTA ANA)

13

JULIANA GRIFFO,

Plaintiff,

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v.

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OCULUS VR, INC., and PALMER
LUCKEY,

Defendants.

16 Case No. 8:15-cv-01228 DOC (JCGx)

17 **[PROPOSED] STIPULATED
PROTECTIVE ORDER**

18 Complaint Filed: July 31, 2015

19 Trial Date: September 11, 2015

20 Judge: Hon. David O. Carter

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1 1. A. PURPOSES AND LIMITATIONS

2 Discovery in this action is likely to involve production of confidential,
3 proprietary or private information for which special protection from public
4 disclosure and from use for any purpose other than prosecuting this litigation may
5 be warranted. Accordingly, the parties hereby stipulate to and petition the Court to
6 enter the following Stipulated Protective Order. The parties acknowledge that this
7 Order does not confer blanket protections on all disclosures or responses to
8 discovery and that the protection it affords from public disclosure and use extends
9 only to the limited information or items that are entitled to confidential treatment
10 under the applicable legal principles.

11 B. GOOD CAUSE STATEMENT

12 This action is likely to involve trade secrets, other valuable research,
13 development, commercial, financial, technical and/or proprietary information for
14 which special protection from public disclosure and from use for any purpose other
15 than prosecution of this action is warranted. Such confidential and proprietary
16 materials and information consist of, among other things, confidential business or
17 financial information, information regarding confidential business practices, or
18 other confidential research, development, or commercial information (including
19 information implicating privacy rights of third parties), information otherwise
20 generally unavailable to the public, or which may be privileged or otherwise
21 protected from disclosure under state or federal statutes, court rules, case decisions,
22 or common law (including, for example, the protective order entered by the court
23 in *ZeniMax Media, Inc. and Id Software LLC v. Oculus VR LLC*, N.D. Tex. Case
24 No. 3:14-cv-1849). Accordingly, to expedite the flow of information, to facilitate
25 the prompt resolution of disputes over confidentiality of discovery materials, to
26 adequately protect information the parties are entitled to keep confidential, to
27 ensure that the parties are permitted reasonable necessary uses of such material in
28 preparation for and in the conduct of trial, to address their handling at the end of

1 the litigation, and serve the ends of justice, a protective order for such information
 2 is justified in this matter. It is the intent of the parties that information will not be
 3 designated pursuant to this protective order for tactical reasons and that nothing be
 4 so designated without a good faith belief that it has been maintained in a
 5 confidential, non-public manner, and there is good cause why it should not be part
 6 of the public record of this case.

7 C. ACKNOWLEDGEMENT OF PROCEDURE FOR FILING UNDER
 8 SEAL

9 The parties further acknowledge, as set forth in Section 12.3, below, that this
 10 Stipulated Protective Order does not entitle them to file confidential information
 11 under seal; Local Civil Rule 79-5 sets forth the procedures that must be followed
 12 and the standards that will be applied when a party seeks permission from the court
 13 to file material under seal.

14 There is a strong presumption that the public has a right of access to judicial
 15 proceedings and records in civil cases. In connection with non-dispositive motions,
 16 good cause must be shown to support a filing under seal. *See Kamakana v. City*
17 and County of Honolulu, 447 F.3d 1172, 1176 (9th Cir. 2006), *Phillips v. Gen.*
18 Motors Corp., 307 F.3d 1206, 1210-11 (9th Cir. 2002), *Makar-Welbon v. Sony*
19 Electrics, Inc., 187 F.R.D. 576, 577 (E.D. Wis. 1999) (even stipulated protective
 20 orders require good cause showing), and a specific showing of good cause or
 21 compelling reasons with proper evidentiary support and legal justification, must be
 22 made with respect to Protected Material that a party seeks to file under seal. The
 23 parties' mere designation of Disclosure or Discovery Material as
 24 **CONFIDENTIAL** does not—without the submission of competent evidence by
 25 declaration, establishing that the material sought to be filed under seal qualifies as
 26 confidential, privileged, or otherwise protectable—constitute good cause.

27 Further, if a party requests sealing related to a dispositive motion or trial,
 28 then compelling reasons, not only good cause, for the sealing must be shown, and

1 the relief sought shall be narrowly tailored to serve the specific interest to be
2 protected. *See Pintos v. Pacific Creditors Ass'n.*, 605 F.3d 665, 677-79 (9th Cir.
3 2010). For each item or type of information, document, or thing sought to be filed
4 or introduced under seal in connection with a dispositive motion or trial, the party
5 seeking protection must articulate compelling reasons, supported by specific facts
6 and legal justification, for the requested sealing order. Again, competent evidence
7 supporting the application to file documents under seal must be provided by
8 declaration.

9 Any document that is not confidential, privileged, or otherwise protectable
10 in its entirety will not be filed under seal if the confidential portions can be
11 redacted. If documents can be redacted, then a redacted version for public viewing,
12 omitting only the confidential, privileged, or otherwise protectable portions of the
13 document, shall be filed. Any application that seeks to file documents under seal in
14 their entirety should include an explanation of why redaction is not feasible.

15 **2. DEFINITIONS**

16 2.1 Action: *Griffo v Oculus VR, Inc. and Palmer Luckey*, Case No. 8:15-cv-
17 01228 DOC (JCGx)

18 2.2 Challenging Party: a Party or Non-Party that challenges the designation
19 of information or items under this Order.

20 2.3 “CONFIDENTIAL” Information or Items: information (regardless of
21 how it is generated, stored or maintained) or tangible things that qualify for
22 protection under Federal Rule of Civil Procedure 26(c), and as specified above in
23 the Good Cause Statement.

24 2.4 Counsel (without qualifier): Outside Counsel of Record and House
25 Counsel (as well as their support staff).

26 2.5 Designating Party: a Party or Non-Party that designates information or
27 items that it produces in disclosures or in responses to discovery as
28 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES

1 ONLY.”

2 2.6 Disclosure or Discovery Material: all items or information, regardless of
3 the medium or manner in which it is generated, stored, or maintained (including,
4 among other things, testimony, transcripts, and tangible things), that are produced
5 or generated in disclosures or responses to discovery in this matter.

6 2.7 Expert: a person with specialized knowledge or experience in a matter
7 pertinent to the litigation who (1) has been retained by a Party or its counsel to
8 serve as an expert witness or as a consultant in this action, (2) is not a past or
9 current employee of a Party or of a Party’s competitor, and (3) at the time of
10 retention, is not anticipated to become an employee of a Party or of a Party’s
11 competitor.

12 2.8 **“HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”**

13 Information or Items: extremely sensitive “Confidential Information or Items” that
14 is highly proprietary or highly sensitive such that disclosure could harm the
15 competitive interests of the Producing Party or a Non-Party that provided the
16 information to the Producing Party on a confidential basis.

17 2.9 House Counsel: attorneys who are employees of a party to this Action
18 working for the party in a legal capacity. House Counsel does not include Outside
19 Counsel of Record or any other outside counsel.

20 2.10 Non-Party: any natural person, partnership, corporation, association or
21 other legal entity not named as a Party to this action.

22 2.11 Outside Counsel of Record: attorneys who are not employees of a party
23 to this Action but are retained to represent or advise a party to this Action and have
24 appeared in this Action on behalf of that party or are employees or partners of a
25 law firm that has appeared on behalf of that party.

26 2.12 Party: any party to this Action, including all of its officers, directors,
27 employees, consultants, retained experts, and Outside Counsel of Record (and their
28 support staffs).

1 2.13 Producing Party: a Party or Non-Party that produces Disclosure or
2 Discovery Material in this Action.

3 2.14 Professional Vendors: persons or entities that provide litigation support
4 services (e.g., photocopying, videotaping, translating, preparing exhibits or
5 demonstrations, and organizing, storing, or retrieving data in any form or medium)
6 and their employees and subcontractors.

7 2.15 Protected Material: any Disclosure or Discovery Material that is
8 designated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –
9 ATTORNEYS’ EYES ONLY.”

10 2.16 Receiving Party: a Party that receives Disclosure or Discovery Material
11 from a Producing Party.

12 3. SCOPE

13 This Order applies not only to Protected Material furnished by a Producing
14 Party, but also to (1) copies, excerpts, abstracts, analyses, summaries, descriptions,
15 or other forms of recorded information containing, reflecting, compiling, or
16 disclosing Protected Material; and (2) any testimony, conversations, or
17 presentations by Parties or their Counsel that might reveal Protected Material.

18 Any use of Protected Material at trial shall be governed by the orders of the
19 trial judge. This Order does not govern the use of Protected Material at trial.

20 4. DURATION

21 Even after final disposition of this litigation, the confidentiality obligations
22 imposed by this Order shall remain in effect until a Designating Party agrees
23 otherwise in writing or a court order otherwise directs. Final disposition shall be
24 deemed to be the later of (1) dismissal of all claims and defenses in this action,
25 with or without prejudice; and (2) final judgment herein after the completion and
26 exhaustion of all appeals, rehearings, remands, trials, or reviews of this action,
27 including the time limits for filing any motions or applications for extension of
28 time pursuant to applicable law.

1 5. DESIGNATING PROTECTED MATERIAL

2 5.1 Exercise of Restraint and Care in Designating Material for Protection.
3 Each Party or Non-Party that designates information or items for protection under
4 this Order must take care to limit any such designation to specific material that
5 qualifies under the appropriate standards. The Designating Party must designate for
6 protection only those parts of material, documents, items or oral or written
7 communications that qualify so that other portions of the material, documents,
8 items or communications for which protection is not warranted are not swept
9 unjustifiably within the ambit of this Order.

10 Mass, indiscriminate or routinized designations are prohibited. Designations
11 that are shown to be clearly unjustified or that have been made for an improper
12 purpose (e.g., to unnecessarily encumber the case development process or to
13 impose unnecessary expenses and burdens on other parties) may expose the
14 Designating Party to sanctions.

15 If it comes to a Designating Party's attention that information or items that it
16 designated for protection do not qualify for protection, that Designating Party must
17 promptly notify all other Parties that it is withdrawing the inapplicable designation.

18 5.2 Manner and Timing of Designations. Except as otherwise provided in
19 this Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise
20 stipulated or ordered, Disclosure or Discovery Material that qualifies for protection
21 under this Order must be clearly so designated before the material is disclosed or
22 produced.

23 Designation in conformity with this Order requires:

24 (a) for information in documentary form (e.g., paper or electronic
25 documents, but excluding transcripts of depositions or other pretrial or trial
26 proceedings), that the Producing Party affix at a minimum, the legend
27 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
28 ONLY” to each page that contains protected material. If only a portion of the

1 material on a page qualifies for protection, the Producing Party also must clearly
2 identify the protected portion(s) (e.g., by making appropriate markings in the
3 margins) and must specify, for each portion, the level of protection being asserted.

4 A Party or Non-Party that makes original documents available for inspection
5 need not designate them for protection until after the inspecting Party has indicated
6 which documents it would like copied and produced. During the inspection and
7 before the designation, all of the material made available for inspection shall be
8 deemed "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY." After the
9 inspecting Party has identified the documents it wants copied and produced, the
10 Producing Party must determine which documents, or portions thereof, qualify for
11 protection under this Order. Then, before producing the specified documents, the
12 Producing Party must affix "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL –
13 ATTORNEYS' EYES ONLY" to each page that contains Protected Material. If
14 only a portion of the material on a page qualifies for protection, the Producing
15 Party also must clearly identify the protected portion(s) (e.g., by making
16 appropriate markings in the margins).

17 (b) for deposition testimony, including transcripts, such testimony shall be
18 deemed "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" until the
19 expiration of fifteen (15) days after the deposition unless otherwise designated at
20 the time of the deposition or during the fifteen (15) day period. Pages or entire
21 transcripts of testimony given at a deposition or hearing may be designated as
22 containing "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS'
23 EYES ONLY" information by an appropriate statement either at the time of the
24 giving of such testimony or by written notification within fifteen (15) days after the
25 deposition. If the testimony is not otherwise designated at the time of the
26 deposition or during the fifteen (15) day period after the deposition, the testimony
27 will be deemed to be "CONFIDENTIAL."

28 Transcripts containing Protected Material shall have an obvious legend on

1 the title page that the transcript contains Protected Material, and the title page shall
2 be followed by a list of all pages (including line numbers as appropriate) that have
3 been designated as Protected Material and the level of protection being asserted by
4 the Designating Party. The Designating Party shall inform the court reporter of
5 these requirements.

6 (c) for transcripts of pretrial and trial proceedings, Parties shall give the
7 other parties notice if they reasonably expect a hearing or other proceeding to
8 include Protected Material so that the other parties can ensure that only authorized
9 individuals and individuals who have signed the “Acknowledgment and
10 Agreement to Be Bound” (Exhibit A) are present at those proceedings. Procedures
11 for requesting confidentiality designations of transcripts for pretrial and trial
12 proceedings shall be in accordance with paragraph 5.2(b) and redaction requests
13 shall be made in accordance with General Order No. 59 and any other applicable
14 rules and procedures set forth by the Court. If a Designating Party seeks redaction
15 of portions of a hearing or trial transcript disclosing its Protected Material, the
16 Receiving Party agrees not to unreasonably withhold its consent to such a request.

17 (d) for information contained in written discovery responses, the responses
18 may be designated as containing “CONFIDENTIAL” or “HIGHLY
19 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” information by means of a
20 statement at the conclusion of each response that contains such information
21 specifying the level of designation of the Protected Material and by placing a
22 legend of the front page of such discovery responses stating: “CONTAINS
23 CONFIDENTIAL INFORMATION/[the highest level of designation contained in
24 the answers].”

25 (e) for information produced in some form other than documentary and for
26 any other tangible items, that the Producing Party affix in a prominent place on the
27 exterior of the container or containers in which the information or item is stored
28 the legend “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’

1 EYES ONLY.” If only a portion or portions of the information or item warrant
2 protection, the Producing Party, to the extent practicable, shall identify the
3 protected portion(s) and specify the level of protection being asserted.

4 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent
5 failure to designate qualified information or items does not, standing alone, waive
6 the Designating Party’s right to secure protection under this Order for such
7 material. Upon timely correction of a designation, the Receiving Party must make
8 reasonable efforts to assure that the material is treated in accordance with the
9 provisions of this Order.

10 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

11 6.1 Timing of Challenges. Any Party or Non-Party may challenge a
12 designation of confidentiality at any time that is consistent with the Court’s
13 Scheduling Order.

14 6.2 Meet and Confer. The Challenging Party shall initiate the dispute
15 resolution process under Local Rule 37-1 et seq. To avoid ambiguity as to whether
16 a challenge has been made, the written notice must recite that the challenge to
17 confidentiality is being made in accordance with this specific paragraph of this
18 Order. In conferring, the Challenging Party must explain the basis for its belief that
19 the confidentiality designation was not proper and must give the Designating Party
20 an opportunity to review the designated material, to reconsider the circumstances,
21 and, if no change in designation is offered, to explain the basis for the chosen
22 designation. A Challenging Party may proceed to the next stage of the challenge
23 process only if it has engaged in this meet and confer process first or establishes
24 that the Designating Party is unwilling to participate in the meet and confer process
25 in a timely manner.

26 6.3 Joint Stipulation. Any challenge submitted to the Court shall be via a
27 joint stipulation pursuant to Local Rule 37-2.

28 6.4 The burden of persuasion in any such challenge proceeding shall be on

1 the Designating Party. Frivolous challenges, and those made for an improper
2 purpose (e.g., to harass or impose unnecessary expenses and burdens on other
3 parties) may expose the Challenging Party to sanctions. Until the Designating
4 Party has waived or withdrawn the confidentiality designation, all parties shall
5 continue to afford the material in question the level of protection to which it is
6 entitled under the Producing Party's designation until the Court rules on the
7 challenge.

8 7. **ACCESS TO AND USE OF PROTECTED MATERIAL**

9 7.1 Basic Principles. A Receiving Party may use Protected Material that is
10 disclosed or produced by another Party or by a Non-Party in connection with this
11 Action only for prosecuting, defending or attempting to settle this Action. Such
12 Protected Material may be disclosed only to the categories of persons and under
13 the conditions described in this Order. When the Action has been terminated, a
14 Receiving Party must comply with the provisions of section 15 below (FINAL
15 DISPOSITION).

16 Protected Material must be stored and maintained by a Receiving Party at a
17 location and in a secure manner that ensures that access is limited to the persons
18 authorized under this Order.

19 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless
20 otherwise ordered by the court or permitted in writing by the Designating Party, a
21 Receiving Party may disclose any information or item designated
22 "CONFIDENTIAL" only to:

23 (a) the Receiving Party's Outside Counsel of Record in this Action, as well
24 as employees of said Outside Counsel of Record to whom it is reasonably
25 necessary to disclose the information for this Action;

26 (b) the officers, directors, and employees (including House Counsel) of the
27 Receiving Party to whom disclosure is reasonably necessary for this Action;

28 (c) Experts (as defined in this Order) of the Receiving Party to whom

1 disclosure is reasonably necessary for this Action and who have signed the
2 “Acknowledgment and Agreement to Be Bound” (Exhibit A);
3 (d) the court and its personnel;
4 (e) court reporters and their staff;
5 (f) professional jury or trial consultants, mock jurors, and Professional
6 Vendors to whom disclosure is reasonably necessary for this Action and who have
7 signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);
8 (g) the author or recipient of a document containing the information or a
9 custodian or other person who otherwise possessed or knew the information;
10 (h) during their depositions, witnesses, and attorneys for witnesses, in the
11 Action to whom disclosure is reasonably necessary provided: (1) the deposing
12 party requests that the witness sign the form attached as Exhibit 1 hereto; and (2)
13 they will not be permitted to keep any confidential information unless they sign the
14 “Acknowledgment and Agreement to Be Bound” (Exhibit A), unless otherwise
15 agreed by the Designating Party or ordered by the court. Pages of transcribed
16 deposition testimony or exhibits to depositions that reveal Protected Material may
17 be separately bound by the court reporter and may not be disclosed to anyone
18 except as permitted under this Stipulated Protective Order; and
19 (i) any mediator or settlement officer, and their supporting personnel,
20 mutually agreed upon by any of the parties engaged in settlement discussions.

21 **7.3 Disclosure of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
22 ONLY” Information or Items.** Unless otherwise ordered by the court or permitted
23 in writing by the Designating Party, a Receiving Party may disclose any
24 information or item designated “HIGHLY CONFIDENTIAL – ATTORNEYS’
25 EYES ONLY” only to:

26 (a) the Receiving Party’s Outside Counsel of Record in this action, as well
27 as employees of said Outside Counsel of Record to whom it is reasonably
28 necessary to disclose the information for this litigation and who have signed the

“Acknowledgment and Agreement to Be Bound” (Exhibit A);

(b) Experts of the Receiving Party (1) to whom disclosure is reasonably necessary for this litigation, (2) who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A), and (3) as to whom the procedures set forth in paragraph 7.4(a), below, have been followed;

(c) the court and its personnel;

(d) court reporters and their staff, professional jury or trial consultants, and Professional Vendors to whom disclosure is reasonably necessary for this litigation; and

(e) the author or recipient of a document containing the information or a custodian or other person who otherwise possessed or knew the information

(f) Any special master, referee, mediator or arbitrator appointed by the Court or selected by the parties to assist in resolution of this Action.

7.4 Procedures for Approving or Objecting to Disclosure of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” Information or Items to Experts.

(a) Unless otherwise ordered by the court or agreed to in writing by the Designating Party, a Party that seeks to disclose to an Expert (as defined in this Order) any information or item that has been designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” pursuant to paragraph 7.3(B) first must make a written request to the Designating Party that (1) identifies the general categories of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” information that the Receiving Party seeks permission to disclose to the Expert, (2) sets forth the full name of the Expert and the city and state of his or her primary residence, (3) attaches a copy of the Expert’s current resume, (4) identifies the Expert’s current employer(s), (5) identifies each person or entity from whom the Expert has received compensation or funding for work in his or her areas of expertise or to whom the Expert has provided professional services, including in

connection with a litigation, at any time during the preceding five years,¹ and
(6) identifies (by name and number of the case, filing date, and location of court)
any litigation in connection with which the Expert has offered expert testimony,
including through a declaration, report, or testimony at a deposition or trial, during
the preceding five years.

6 (b) A Party that makes a request and provides the information specified in
7 the preceding respective paragraphs may disclose the subject Protected Material to
8 the identified Expert unless, within fourteen (14) days of delivering the request, the
9 Party receives a written objection from the Designating Party. Any such objection
10 must set forth in detail the grounds on which it is based.

11 (c) A Party that receives a timely written objection must meet and confer
12 with the Designating Party (through direct voice to voice dialogue) to try to resolve
13 the matter by agreement within seven (7) days of the written objection. If no
14 agreement is reached, the Party seeking to make the disclosure to the Expert may
15 file a motion as provided in Civil Local Rule 7 (and in compliance with Civil Local
16 Rule 79-5, if applicable) seeking permission from the court to do so. Any such
17 motion must describe the circumstances with specificity, set forth in detail the
18 reasons why disclosure to the Expert is reasonably necessary, assess the risk of
19 harm that the disclosure would entail, and suggest any additional means that could
20 be used to reduce that risk. In addition, any such motion must be accompanied by a
21 competent declaration describing the parties' efforts to resolve the matter by
22 agreement (*i.e.*, the extent and the content of the meet and confer discussions) and
23 setting forth the reasons advanced by the Designating Party for its refusal to
24 approve the disclosure.

25 In any such proceeding, the Party opposing disclosure to the Expert shall

26 ¹ If the Expert believes any of this information is subject to a confidentiality
27 obligation to a third-party, then the Expert should provide whatever information
28 the Expert believes can be disclosed without violating any confidentiality
 agreements, and the Party seeking to disclose to the Expert shall be available to
 meet and confer with the Designating Party regarding any such engagement.

1 bear the burden of proving that the risk of harm that the disclosure would entail
2 (under the safeguards proposed) outweighs the Receiving Party's need to disclose
3 the Protected Material to its Expert.

4 8. COMMERCIALLY SENSITIVE SOURCE CODE

5 To the extent that inspection of commercially or otherwise sensitive source
6 code becomes necessary in this case, the parties will meet and confer about a
7 supplemental protective order applicable to such discovery.

8 9. PROTECTED MATERIAL SUBPOENAED OR ORDERED
9 PRODUCED IN OTHER LITIGATION

10 If a Party is served with a subpoena or a court order issued in other litigation
11 that compels disclosure of any information or items designated in this Action as
12 "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES
13 ONLY," that Party must:

14 (a) promptly notify in writing the Designating Party. Such notification
15 shall include a copy of the subpoena or court order;

16 (b) promptly notify in writing the party who caused the subpoena or order to
17 issue in the other litigation that some or all of the material covered by the subpoena
18 or order is subject to this Protective Order. Such notification shall include a copy
19 of this Stipulated Protective Order; and

20 (c) cooperate with respect to all reasonable procedures sought to be pursued
21 by the Designating Party who's Protected Material may be affected.

22 If the Designating Party timely seeks a protective order, the Party served
23 with the subpoena or court order shall not produce any information designated in
24 this action as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL –
25 ATTORNEYS' EYES ONLY" before a determination by the court from which the
26 subpoena or order issued, unless the Party has obtained the Designating Party's
27 permission. The Designating Party shall bear the burden and expense of seeking
28 protection in that court of its confidential material and nothing in these provisions

1 should be construed as authorizing or encouraging a Receiving Party in this Action
2 to disobey a lawful directive from another court.

3 **10. A NON-PARTY'S PROTECTED MATERIAL SOUGHT TO BE**
4 **PRODUCED IN THIS LITIGATION**

5 (a) The terms of this Order are applicable to information produced by a Non-
6 Party in this Action and designated as "CONFIDENTIAL" or "HIGHLY
7 CONFIDENTIAL – ATTORNEYS' EYES ONLY." Such information produced
8 by Non-Parties in connection with this litigation is protected by the remedies and
9 relief provided by this Order. Nothing in these provisions should be construed as
10 prohibiting a Non-Party from seeking additional protections.

11 (b) In the event that a Party is required, by a valid discovery request, to
12 produce a Non-Party's confidential information in its possession, and the Party is
13 subject to an agreement with the Non-Party not to produce the Non-Party's
14 confidential information, then the Party shall:

15 (1) promptly notify in writing the Requesting Party and the Non-Party that
16 some or all of the information requested is subject to a confidentiality agreement
17 with a Non-Party;

18 (2) promptly provide the Non-Party with a copy of the Stipulated Protective
19 Order in this Action, the relevant discovery request(s), and a reasonably specific
20 description of the information requested; and

21 (3) make the information requested available for inspection by the Non-
22 Party, if requested.

23 (4) request agreement from the Non-Party to produce the information
24 requested;

25 (5) produce the requested information to the extent permitted by the
26 confidentiality agreement or the agreement of the Non-Party..

27 (c) In the event that a Party is required, by a valid discovery request, to
28 produce a Non-Party's confidential information in its possession, and that

1 information governed by a protective order entered by a court, then the Party shall:
2 (1) promptly notify in writing the Requesting Party that the information
3 requested is governed by a protective order entered by a court;
4 (2) produce the information requested only to the extent permitted by the
5 said protective order.

6 11. **UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

7 If a Receiving Party learns that, by inadvertence or otherwise, it has
8 disclosed Protected Material to any person or in any circumstance not authorized
9 under this Stipulated Protective Order, the Receiving Party must immediately (a)
10 notify in writing the Designating Party of the unauthorized disclosures, (b) use its
11 best efforts to retrieve all unauthorized copies of the Protected Material, (c) inform
12 the person or persons to whom unauthorized disclosures were made of all the terms
13 of this Order, and (d) request such person or persons to execute the
14 “Acknowledgment and Agreement to Be Bound” that is attached hereto as Exhibit
15 A.

16 12. **INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE**
17 **PROTECTED MATERIAL**

18 When a Producing Party gives notice to Receiving Parties that certain
19 inadvertently produced material is subject to a claim of privilege or other
20 protection, the obligations of the Receiving Parties are those set forth in Federal
21 Rule of Civil Procedure 26(b)(5)(B). Pursuant to Federal Rule of Evidence 502(d),
22 the production of a privileged or work-product-protected document is not a waiver
23 of privilege or protection from discovery in this case or in any other federal or state
24 proceeding. For example, the mere production of privilege or work-product-
25 protected documents in this case as part of a mass production is not itself a waiver
26 in this case or any other federal or state proceeding. A Producing Party may assert
27 privilege or protection over produced documents at any time by notifying the
28 Receiving Party in writing of the assertion of privilege or protection. This

1 provision is not intended to modify whatever procedure may be established in an e-
2 discovery order that provides for production without prior privilege review.

3 13. MISCELLANEOUS

4 13.1 Right to Further Relief. Nothing in this Order abridges the right of any
5 person to seek its modification by the Court in the future.

6 13.2 Right to Assert Other Objections. By stipulating to the entry of this
7 Protective Order, no Party waives any right it otherwise would have to object to
8 disclosing or producing any information or item on any ground not addressed in
9 this Stipulated Protective Order. Similarly, no Party waives any right to object on
10 any ground to use in evidence of any of the material covered by this Protective
11 Order.

12 13.3 Producing Party's Material. The restrictions on the use of Protected
13 Material established by this Order are applicable only to the use of information
14 received by a party from another Party or from a Non-Party. A Party is free to use
15 its own information as it pleases.

16 13.4 Filing Protected Material. Without written permission from the
17 Designating Party or a court order secured after appropriate notice to all interested
18 persons, a Party may not file in the public record in this action any Protected
19 Material. A Party that seeks to file under seal any Protected Material must comply
20 with Local Civil Rule 79-5. Protected Material may only be filed under seal
21 pursuant to a court order authorizing the sealing of the specific Protected Material
22 at issue. If a Party's request to file Protected Material under seal is denied by the
23 court, then the Receiving Party may file the information in the public record unless
24 otherwise instructed by the court.

25 13.5 ADVICE OF COUNSEL. NOTHING IN THIS ORDER SHALL
26 PREVENT OR OTHERWISE RESTRICT OUTSIDE COUNSEL OF RECORD
27 FROM RENDERING ADVICE TO THEIR CLIENTS AND, IN THE COURSE
28 THEREOF, RELYING GENERALLY ON PROTECTED MATERIAL;

1 PROVIDED, HOWEVER, THAT IN RENDERING SUCH ADVICE COUNSEL
2 SHALL NOT DISCLOSE, REVEAL OR DESCRIBE ANY SUCH MATERIALS
3 EXCEPT INSOFAR AS ALLOWED (IF ALLOWED AT ALL) UNDER THE
4 TERMS OF THIS ORDER.

5 13.6 Export Control. The Protected Material disclosed by the Producing
6 Party may contain technical data subject to export control laws and therefore the
7 release of such technical data to foreign persons or nationals in the United States or
8 elsewhere may be restricted. The Receiving Party shall take measures necessary to
9 ensure compliance with applicable export control laws, including confirming that
10 no unauthorized foreign person has access to such technical data.

11 No Protected Material may leave the territorial boundaries of the United
12 States of America. Without limitation, this prohibition extends to Protected
13 Information (including copies) in physical and electronic form. The viewing of
14 Protected Information through electronic means outside the territorial limits of the
15 United States of America is similarly prohibited. The restrictions contained within
16 this paragraph may be amended through the express written consent of the
17 Producing Party to the extent that such agreed to procedures conform with
18 applicable export control laws and regulations. Nothing in this paragraph is
19 intended to remove any obligation that may otherwise exist to produce documents
20 currently located in a foreign country.

21 14. FINAL DISPOSITION

22 After the final disposition of this Action, as defined in paragraph 4, within
23 60 days of a written request by the Designating Party, each Receiving Party must
24 return all Protected Material to the Producing Party or destroy such material. As
25 used in this subdivision, “all Protected Material” includes all copies, abstracts,
26 compilations, summaries, and any other format reproducing or capturing any of the
27 Protected Material. Whether the Protected Material is returned or destroyed, the
28 Receiving Party must submit a written certification to the Producing Party (and, if

1 not the same person or entity, to the Designating Party) by the 60 day deadline that
2 (1) identifies (by category, where appropriate) all the Protected Material that was
3 returned or destroyed and (2) affirms that the Receiving Party has not retained any
4 copies, abstracts, compilations, summaries or any other format reproducing or
5 capturing any of the Protected Material. Notwithstanding this provision, Counsel
6 are entitled to retain an archival copy of all pleadings, motion papers, trial,
7 deposition, and hearing transcripts, legal memoranda, correspondence, deposition
8 and trial exhibits, expert reports, attorney work product, and consultant and expert
9 work product, even if such materials contain Protected Material. Any such archival
10 copies that contain or constitute Protected Material remain subject to this
11 Protective Order as set forth in Section 4 (DURATION).

15. VIOLATION

13 Any violation of this Order may be punished by appropriate measures
14 including, without limitation, contempt proceedings and/or monetary sanctions.

16 IT IS SO STIPULATED. THROUGH COUNSEL OF RECORD.

Dated: August 21, 2017

KEKER, VAN NEST & PETERS
LLP

By: /s/ *Michael S. Kwun*

DAVID SILBERT
MICHAEL S. KWUN
LEAH PRANSKY

Attorneys for Defendants OCULUS VR, INC., and PALMER LUCKEY

1 Dated: August 21, 2017

ERVIN COHEN & JESSUP LLP

2

3

By: */s/ Russell M. Selmont*

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Randall S. Leff

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Russell M. Selmont

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Attorneys for Defendants

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OCULUS VR LLC, and PALMER

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LUCKEY

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ATTESTATION

Pursuant to Civil Local Rule 5-4.3.4, I attest that all other signatories listed, and on whose behalf this filing is submitted, concur in the filing's content and have authorized the filing.

Dated: August 21, 2017

/s/ Leah Pransky
LEAH PRANSKY

1
2 EXHIBIT A
3

4 ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND
5

6 I, _____ [print or type full name], of
7 _____ [print or type full address], declare under penalty of
8 perjury that I have read in its entirety and understand the Stipulated Protective
9 Order that was issued by the United States District Court for the Central District of
10 California on [date] in the case of _____ [insert formal name of the case
11 and the number and initials assigned to it by the court]. I agree to comply with and
12 to be bound by all the terms of this Stipulated Protective Order and I understand
13 and acknowledge that failure to so comply could expose me to sanctions and
14 punishment in the nature of contempt. I solemnly promise that I will not disclose in
15 any manner any information or item that is subject to this Stipulated Protective
16 Order to any person or entity except in strict compliance with the provisions of this
17 Order. I further agree to submit to the jurisdiction of the United States District
18 Court for the Central District of California for enforcing the terms of this
19 Stipulated Protective Order, even if such enforcement proceedings occur after
20 termination of this action. I hereby appoint _____ [print
21 or type full name] of _____ [print or
22 type full address and telephone number] as my California agent for service of
23 process in connection with this action or any proceedings related to enforcement of
24 this Stipulated Protective Order.

25 Date: _____
26

27 City and State where sworn and signed: _____
28

Printed name: _____
29

Signature: _____
30